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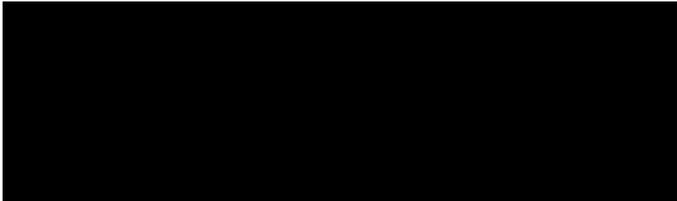
U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

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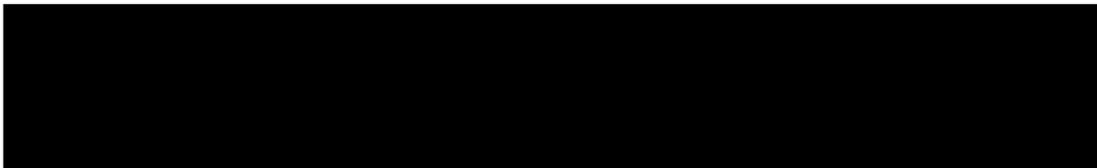
FILE: EAC 07 264 50400 Office: VERMONT SERVICE CENTER Date: JAN 02 2008

IN RE: Petitioner:
Beneficiaries:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved for 68 beneficiaries by the Director, Vermont Service Center, and certified to the Administrative Appeals Office (AAO) for review as required by 8 C.F.R. § 214.2(h)(9)(iii)(B)(2)(ii). The decision of the director will be affirmed in part and withdrawn in part, as follows. The decision of the director will be affirmed, and the petition will be approved, for only those 45 of the petition's 68 named workers for whom the record contains sufficient evidence of the six months of experience in the job offered and the other special requirements specified on the Form ETA 750 (application for temporary labor certification). The decision of the director will be withdrawn and the petition will be denied for the other 23 workers named in the petition.

The petitioner is a AAA Five Diamond luxury resort and full-service hotel located in the French Quarter of New Orleans, Louisiana. It desires to employ the beneficiaries as housekeepers from October 1, 2007 to June 30, 2008. The Department of Labor (DOL) determined that a temporary labor certification by the Secretary of Labor could not be made. The director determined that sufficient countervailing evidence has been submitted to show that qualified persons in the United States are not available, that the employment policies of the DOL have been observed, and that the need for the services to be performed is temporary.

The director recommended approving the petition for all of the 68 workers named therein. The AAO finds insufficient evidence of the housekeeping experience of 23 of the 68 named workers. Therefore, that part of the director's decision recommending approval of 68 beneficiaries is withdrawn, to be replaced by the AAO's finding, below, that the petition will be approved only for 45 of the 68 aliens named in the petition as filed, that is, for all of the named workers except the 23 listed below in this decision as lacking sufficient evidence of the housekeeping experience that the Form ETA 750 specified as necessary for satisfactory performance of the job in question.

At item 14 of the Form ETA 750, the petitioner specified six (6) months experience as a housekeeper as the minimum experience required for a worker to perform satisfactorily the job in question.

Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii)(b), defines an H-2B temporary worker as:

an alien having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country

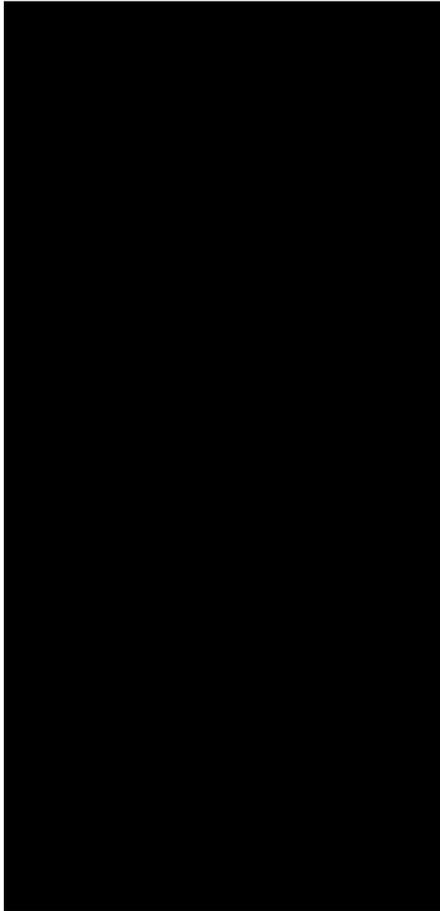
The regulation at 8 C.F.R. § 214.2(h)(6)(vi)(C), alien's qualifications, requires the petitioner to submit:

Documentation that the alien qualifies for the job offer as specified in the application for labor certification, except in petitions where the labor certification application requires no education, training, experience, or special requirements of the beneficiary.

The AAO addressed the issue of eligible beneficiaries by faxing to counsel requests for additional evidence of experience. The documents that counsel submitted in reply are now included in the record of proceedings, and they were considered in the AAO's review of the certification before it.

The petitioner did not submit sufficient evidence of the requisite six months of experience as housekeepers for the 23 beneficiaries' listed below:¹

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The petitioner submitted resumes for some of the workers listed above. However, the resumes are not sufficient to establish the requisite experience, as they are not supplemented by corroborative documentation from the employers where the experience is said to have been gained. Therefore, the petitioner has not established that the above-listed 23 persons have the six months of experience as housekeepers that the Form ETA 750 specified as necessary to perform satisfactorily the job duties that are the subject of this petition. Therefore, the director's decision is incorrect with regard to the number of workers who may benefit from approval of the petition. Accordingly, the director's decision will be withdrawn in so far as it recommends approval of the petition for the 23 persons listed above. The director's decision will be affirmed, and the petition will be approved, only for the remaining 45 persons named as beneficiaries in the petition.

The decision of the director recommending approval of the petition is affirmed, as modified above, and the petition is accordingly approved for only those 45 of the 68 workers initially named in the petition for whom sufficient evidence was submitted of the housekeeping experience that the Form ETA 750 specified as necessary for satisfactory performance of the job in question.

¹ All of the workers initially named in the petition appear to meet the appropriate-personality requirement also specified on the Form ETA 750.

The regulation at 8 C.F.R. § 214.2(h)(9)(i)(A) instructs that the director's approval notice "shall cover only those beneficiaries approved for classification under section 101(a)(15)(H) of the Act." Accordingly, the Vermont Service Center's approval notice must specify the names of the 45 beneficiaries for whom the petition is approved. The petitioner has provided sufficient evidence to establish that the need for these 45 beneficiaries' services is peakload and temporary. The Vermont Service Center will issue the appropriate approval notice, consistent with the above discussion and the order below.

ORDER: The director's decision of October 30, 2007 approving the petition is withdrawn in part and affirmed in part as follows.

IT IS ORDERED: The director's decision is withdrawn and the nonimmigrant petition is denied for the 23 workers (listed above in this decision) for whom the evidence of record fails to establish the requisite six months of experience in the job being offered.

IT IS ORDERED: The director's decision is affirmed and the nonimmigrant visa petition is approved for the remaining 45 of the 68 workers initially named in the petition, for whom sufficient evidence was submitted of the six months of experience as a housekeeper that the Form ETA 750 specified as necessary for satisfactory performance of the job being offered.